

2005 DRAFTING REQUEST

Bill

Received: **08/25/2004**

Received By: **dkennedy**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - JLC 6-9791**

By/Representing: **Laura Rose**

This file may be shown to any legislator: **NO**

Drafter: **dkennedy**

May Contact:

Addl. Drafters:

Subject: **Mental Health - protect place**

Extra Copies:

Submit via email: **YES**

Requester's email: **laura.rose@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Elder adults at risk and adults at risk

Instructions:

Same as 03-4213, as modified

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	dkennedy 09/07/2004	jdyer 09/08/2004		_____			
/P1		jdyer 09/16/2004	jfrantze 09/13/2004	_____	sbasford 09/13/2004		S&L
		jdyer 10/15/2004	pgreensl 11/03/2004	_____	lemery 11/03/2004		Crime
		jdyer 11/03/2004		_____			

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/1	dkennedy 05/29/2005	jdye 06/01/2005	pgreensl 06/02/2005	_____	sbasford 06/02/2005	sbasford 06/09/2005	

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6/1/04 ps

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/?	dkennedy	1/11/04 JLC	8/9/13	8/13/13			
			11/13/13	11/13/13			

FE Sent For:

<END>

1 **AN ACT** *to repeal* 46.90 (1) (b), 46.90 (1) (d), 46.90 (5) (g), 813.123 (1) (h), 940.285
2 (1) (b), (bm), (c), (d), and (e), 940.295 (1) (cm), 940.295 (1) (hm), 940.295 (1) (jm),
3 940.295 (1) (kp), 940.295 (1) (n) and 940.295 (1) (t); *to renumber* 46.90 (4) (a),
4 55.043 (1) to (4), 146.001 (1), 146.001 (2), 813.123 (4) (a) 1., 813.123 (5) (a) 1. and
5 2., 813.123 (5) (a) 3. and 940.295 (1) (a); *to renumber and amend* 46.90 (5) (a),
6 46.90 (6) (a), 813.123 (2), 813.123 (3) (b) (intro.), 813.123 (3) (b) 2. and 3., 813.123
7 (4) (a) 2. and 813.123 (5) (a) (intro.); *to amend* 46.21 (2m) (c), 46.215 (1m), 46.22
8 (1) (dm), 46.23 (3) (e), 46.90 (2), 46.90 (3) (a), (b), and (c), 46.90 (4) (ar) 1., 46.90
9 (4) (b) 1. c., 46.90 (4) (c), 46.90 (4) (d), 46.90 (5) (b), 46.90 (5) (c), (d), and (f),
10 46.90 (5m) (title) and (a), 46.90 (5m) (c), 46.90 (6) (b) (intro.) 1., 6. and 7., 46.90 (6)
11 (c) 1., 46.90 (8) (a), (c), and (d), 50.09 (1) (k), 51.42 (3) (e), 51.437 (4r) (b), 51.62
12 (3) (a) 2m., 55.01 (1m), 55.043 (1) (a) 3. and 5., 55.043 (3) (a) 1., (b), (4), (5), (6)
13 (title) and (intro.), and (a) to (f), 813.123 (4) (a), 813.123 (5) (c) 1., 2., and 3.,
14 813.123 (6) (a), 813.123 (6) (c), 813.123 (7), 813.123 (9) (intro.), 813.123 (11),
15 940.285 (title), 940.285 (2) (title) and (2) (a) 1. to 3., 940.295 (1) (b) and 940.295 (1)
16 (o); *to repeal and recreate* 46.90 (1) (a), 46.90 (1) (e), 46.90 (1) (f), 46.90 (1) (g),
17 51.62 (1) (ag), 51.62 (1) (br), 55.01 (1), 55.01 (1p), 55.01 (4p), 55.01 (4r), 55.043 (3)
18 (a) (intro.), 813.123 (1) (a), 813.123 (1) (f), 813.123 (1) (g), 940.285 (1) (a), 940.295
19 (1) (j), 940.295 (1) (k) and 940.295 (1) (km); and *to create* 46.90 (1) (aj), 46.90 (1)
20 (an), 46.90 (1) (bg), 46.90 (1) (br), 46.90 (1) (bt), 46.90 (1) (cm), 46.90 (1) (eg),
21 46.90 (1) (er), 46.90 (1) (fg), 46.90 (1) (fr), 46.90 (1) (gr), 46.90 (1) (h), 46.90 (1)
22 (i), 46.90 (4) (a), 46.90 (4) (ad), 46.90 (4) (ae), 46.90 (4) (ag), 46.90 (4) (b) 1. d.,

46.90 (4) (e), 46.90 (5) (a) 1., 46.90 (5) (b) 6., 46.90 (5) (br), 46.90 (5) (h), 46.90 (5m) (br), 46.90 (6) (a), 46.90 (6) (b) 9. and 10., 46.90 (6) (bd), 46.90 (6) (br), 46.90 (6) (bt), 46.90 (6) (bv) and (bw), 51.62 (1) (a), 55.01 (1) (e), 55.01 (1d), 55.01 (1v), 55.01 (2s), 55.01 (6), 55.01 (6b), 55.043 (1), 55.043 (2), 55.043 (2m), 55.043 (3) (c), 55.043 (3m), 55.043 (5) (f), 55.043 (7), 55.043 (8), 55.043 (9), 146.001 (1), 146.001 (1r), 813.123 (1) (ae), 813.123 (1) (am), 813.123 (1) (b), 813.123 (1) (br), 813.123 (1) (dm), 813.123 (1) (er), 813.123 (1) (gr), 813.123 (1) (gs), 813.123 (2) (b), 813.123 (3) (c) (intro.), 813.123 (4) (ar) (intro.), 813.123 (5) (ar) (intro.), 813.123 (5) (ar) 3. a. and b., 813.123 (5) (ar) 3. c., 940.225 (2) (h), 940.225 (5) (ad) and (ak), 940.285 (1) (ad), 940.295 (1) (a), 940.295 (1) (ad) and 940.295 (1) (cd) of the statutes; **relating to:** adult protective services.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 46.21 (2m) (c) of the statutes is amended to read:

46.21 (2m) (c) *Exchange of information.* Notwithstanding ss. 46.2895 (9), 48.78 (2) (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), 55.06 (17) (c), 146.82, 252.11 (7) and 253.07 (3) (c), any subunit of the county department of human services or tribal agency acting under this subsection may exchange confidential information about a client, without the informed consent of the client, with any other subunit of the same county department of human services or tribal agency, with a resource center, care management organization or family care district, or with any person providing services to the client under a purchase of services contract with the county department of human services or tribal agency or with a resource center, care management organization or family care district, if necessary to enable an employee or service provider to perform his or her duties, or to enable the county department of human services

1 or tribal agency to coordinate the delivery of services to the client. Any agency releasing
2 information under this subsection shall document that a request for information was received
3 and what information was provided.

4 **SECTION 2.** 46.215 (1m) of the statutes is amended to read:

5 46.215 (1m) EXCHANGE OF INFORMATION. Notwithstanding ss. 46.2895 (9), 48.78 (2)
6 (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), 55.06 (17) (c), 146.82, 252.11 (7), 253.07 (3) (c)
7 and 938.78 (2) (a), any subunit of the county department of social services or tribal agency
8 acting under this section may exchange confidential information about a client, without the
9 informed consent of the client, with any other subunit of the same county department of social
10 services or tribal agency, with a resource center, care management organization or family care
11 district, or with any person providing services to the client under a purchase of services
12 contract with the county department of social services or with a resource center, care
13 management organization or family care district, if necessary to enable an employee or service
14 provider to perform his or her duties, or to enable the county department of social services or
15 tribal agency to coordinate the delivery of services to the client. Any agency releasing
16 information under this subsection shall document that a request for information was received
17 and what information was provided.

18 **SECTION 3.** 46.22 (1) (dm) of the statutes is amended to read:

19 46.22 (1) (dm) *Exchange of information.* Notwithstanding ss. 46.2895 (9), 48.78 (2)
20 (a), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), 55.06 (17) (c), 146.82, 252.11 (7), 253.07 (3) (c)
21 and 938.78 (2) (a), any subunit of the county department of social services or tribal agency
22 acting under this subsection may exchange confidential information about a client, without
23 the informed consent of the client, with any other subunit of the same county department of
24 social services or tribal agency, with a resource center, care management organization or

1 family care district, or with any person providing services to the client under a purchase of
2 services contract with the county department of social services or tribal agency or with a
3 resource center, care management organization or family care district, if necessary to enable
4 an employee or service provider to perform his or her duties, or to enable the county
5 department of social services or tribal agency to coordinate the delivery of services to the
6 client. Any agency releasing information under this paragraph shall document that a request
7 for information was received and what information was provided.

8 **SECTION 4.** 46.23 (3) (e) of the statutes is amended to read:

9 46.23 (3) (e) *Exchange of information.* Notwithstanding ss. 46.2895 (9), 48.78 (2) (a),
10 49.45 (4), 49.83, 51.30, 51.45 (14) (a), 55.06 (17) (c), 146.82, 252.11 (7), 253.07 (3) (c) and
11 938.78 (2) (a), any subunit of a county department of human services or tribal agency acting
12 under this section may exchange confidential information about a client, without the informed
13 consent of the client, with any other subunit of the same county department of human services
14 or tribal agency, with a resource center, care management organization or family care district,
15 or with any person providing services to the client under a purchase of services contract with
16 the county department of human services or tribal agency or with a resource center, care
17 management organization or family care district, if necessary to enable an employee or service
18 provider to perform his or her duties, or to enable the county department of human services
19 or tribal agency to coordinate the delivery of services to the client. Any agency releasing
20 information under this paragraph shall document that a request for information was received
21 and what information was provided.

22 **SECTION 5.** 46.90 (1) (a) of the statutes is repealed and recreated to read:

23 46.90 (1) (a) "Abuse" means any of the following:

24 1. Physical abuse, as defined in s. 46.90 (1) (fg).

1 2. Emotional abuse, as defined in s. 46.90 (1) (cm).

2 3. Sexual abuse, as defined in s. 46.90 (1) (fr).

3 4. Treatment without consent, as defined in s. 46.90 (1) (h).

4 5. Unreasonable confinement or restraint, as defined in s. 46.90 (1) (i).

5 **SECTION 6.** 46.90 (1) (aj) of the statutes is created to read:

6 46.90 (1) (aj) "Bodily harm" means physical pain or injury, illness, or any impairment
7 of physical condition.

8 **SECTION 7.** 46.90 (1) (an) of the statutes is created to read:

9 46.90 (1) (an) "Caregiver" means an individual who has assumed responsibility for all
10 or a portion of a person's care voluntarily, by contract, or by agreement including a person
11 acting or claiming to act as a legal guardian.

12 **SECTION 8.** 46.90 (1) (b) of the statutes is repealed.

13 **SECTION 9.** 46.90 (1) (bg) of the statutes is created to read:

14 46.90 (1) (bg) "Degenerative brain disorder" has the meaning given in s. 55.01 (1v).

15 **SECTION 10.** 46.90 (1) (br) of the statutes is created to read:

16 46.90 (1) (br) "Elder adult-at-risk" means any person age 60 or older who has
17 experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, or financial
18 exploitation.

19 **SECTION 11.** 46.90 (1) (bt) of the statutes is created to read:

20 46.90 (1) (bt) "Elder adult-at-risk agency" means the agency designated by the county
21 board of supervisors under sub. (2) to receive, respond to and investigate reports of abuse,
22 neglect, self-neglect, and financial exploitation under s. 46.90 (4).

23 **SECTION 12.** 46.90 (1) (cm) of the statutes is created to read:

1 46.90 (1) (cm) "Emotional abuse" means language or behavior which serves no
2 legitimate purpose and is intended to be intimidating, humiliating, threatening, frightening,
3 or otherwise harassing, and which does or could reasonably intimidate, threaten, frighten, or
4 otherwise harass the person to whom the conduct or language is directed.

5 **SECTION 13.** 46.90 (1) (d) of the statutes is repealed.

6 **SECTION 14.** 46.90 (1) (e) of the statutes is repealed and recreated to read:

7 46.90 (1) (e) "Financial exploitation" means any of the following:

8 1. Obtaining a person's money or property by deceiving or enticing the person, or by
9 forcing, compelling, or coercing the person to give, sell at less than fair market value, or in
10 other ways convey money or property against his or her will without his or her informed
11 consent.

12 2. Theft, as defined in s. 943.20.

13 3. The substantial failure or neglect of a fiscal agent to fulfill his or her responsibilities.

14 **SECTION 15.** 46.90 (1) (eg) of the statutes is created to read:

15 46.90 (1) (eg) "Fiscal agent" includes any of the following:

16 1. A guardian of the estate appointed under s. 880.03.

17 2. A conservator appointed under s. 880.31.

18 3. An agent under a financial power of attorney under s. 243.07.

19 4. A representative payee under 20 CFR 416.635.

20 5. A conservatorship under the veteran's affairs administration.

21 **SECTION 16.** 46.90 (1) (er) of the statutes is created to read:

22 46.90 (1) (er) "Investigative agency" means law enforcement, municipal, county, or
23 state governmental agencies or units with functions relating to protecting health, welfare,
24 safety, and property including agencies concerned with animal protection, public health,

1 building code enforcement, consumer protection, and insurance and financial institution
2 regulation.

3 **SECTION 17.** 46.90 (1) (f) of the statutes is repealed and recreated to read:

4 46.90 (1) (f) "Neglect" means the failure of a caregiver, as evidenced by an act,
5 omission, or course of conduct, to endeavor to secure or maintain adequate care, services, or
6 supervision including, but not limited to, food, clothing, shelter, or physical or mental health
7 care, which failure creates significant risk or danger to a person's physical or mental health.
8 Neglect does not include a decision made not to seek medical care, if that decision is consistent
9 with a previously executed health care advance directive under chs. 154 and 155 or as
10 otherwise authorized by law.

11 **SECTION 18.** 46.90 (1) (fg) of the statutes is created to read:

12 46.90 (1) (fg) "Physical abuse" means the intentional or reckless infliction of bodily
13 harm.

14 **SECTION 19.** 46.90 (1) (fr) of the statutes is created to read:

15 46.90 (1) (fr) "Sexual abuse" means a violation of s. 940.225 (1) to (3m).

16 **SECTION 20.** 46.90 (1) (g) of the statutes is repealed and recreated to read:

17 46.90 (1) (g) "Self-neglect" means a significant danger to a person's physical or mental
18 health because the person is responsible for his or her own care but fails to obtain adequate
19 care including, but not limited to, food, clothing, shelter, or medical or dental care.

20 **SECTION 21.** 46.90 (1) (gr) of the statutes is created to read:

21 46.90 (1) (gr) "State official" means any law enforcement officer employed by the state,
22 or an employee of one of the following state agencies:

- 23 1. Department of health and family services.
- 24 2. Department of justice.

1 3. Department of regulation and licensing.

2 4. Board on aging and long-term care.

3 5. Any other relevant agency with functions relating to protecting health and safety.

4 **SECTION 22.** 46.90 (1) (h) of the statutes is created to read:

5 46.90 (1) (h) "Treatment without consent" means the administration of medication to
6 a person who has not provided informed consent, or the performance of psychosurgery,
7 electroconvulsive therapy, or experimental research on a person who has not provided
8 informed consent, with the knowledge that no lawful authority exists for the administration
9 or performance.

10 **SECTION 23.** 46.90 (1) (i) of the statutes is created to read:

11 46.90 (1) (i) "Unreasonable confinement or restraint" includes the intentional and
12 unreasonable use of a locked room, involuntary separation of a person from his or her living
13 area, or physical restraining devices, or the unnecessary or excessive use of medication, but
14 does not include the use of such methods or devices in entities regulated by the department
15 if employed in conformance with state and federal standards governing confinement and
16 restraint.

17 **SECTION 24.** 46.90 (2) of the statutes is amended to read:

18 46.90 (2) (title) ~~COUNTY~~ ELDER ADULT-AT-RISK AGENCY DESIGNATION. Each county board
19 shall designate an agency in the county as the ~~county~~ elder adult-at-risk agency for the
20 purposes of this section.

21 **SECTION 25.** 46.90 (3) (a), (b), and (c) of the statutes are amended to read:

22 46.90 (3) (a) Each ~~county~~ elder adult-at-risk agency shall develop a policy for notifying
23 law enforcement officials in appropriate cases and shall establish an elder abuse reporting
24 system to carry out the purposes of this section. Each ~~county~~ elder adult-at-risk agency shall

1 enter into a memorandum of understanding regarding the operation of the system with the
2 county department under s. 46.215 or 46.22 and with any private or public agency, including
3 a county department under s. 51.42 or 51.437, within the county that is participating in the
4 elder abuse reporting system. The memorandum of understanding shall, at a minimum,
5 identify the agencies that are responsible for the investigation of reports of abuse, ~~material~~
6 ~~abuse~~ financial exploitation, neglect or self-neglect of elder adults-at-risk and for the
7 provision of specific direct services.

8 (b) Each ~~county~~ elder adult-at-risk agency shall receive reports of abuse, ~~material~~
9 ~~abuse~~ financial exploitation, neglect or self-neglect of ~~elder persons~~ adults-at-risk.

10 (c) Each ~~county~~ elder adult-at-risk agency shall publicize the existence of an elder
11 abuse reporting system in the county and shall provide a publicized telephone number which
12 can be used by persons wishing to report suspected cases of abuse, ~~material-abuse~~ financial
13 exploitation, neglect or self-neglect of elder adults-at-risk. Each elder adult-at-risk agency
14 shall also provide a telephone number which can be used by persons wishing to make reports
15 after the elder adult-at-risk agency's regular business hours.

16 **SECTION 26.** 46.90 (4) (a) of the statutes is renumbered 46.90 (4) (ar).

17 **SECTION 27.** 46.90 (4) (a) of the statutes is created to read:

18 46.90 (4) (a) *Reports.* The following persons shall file reports as specified in par. (ad):

19 1. An employee of any entity that is licensed, certified, or approved by, or registered
20 with the department.

21 2. An employee of a financial institution, as defined in s. 705.01 (3).

22 3. A health care provider, as defined in s. 155.01 (7).

23 4. A social worker, professional counselor, or marriage and family therapist certified
24 under ch. 457.

1 **SECTION 28.** 46.90 (4) (ad) of the statutes is created to read:

2 46.90 (4) (ad) Except as provided in par. (ae), a person specified in par. (a), who has seen
3 an elder adult-at-risk in the course of the person's professional duties, shall file a report with
4 the county department, the elder adults-at-risk agency, a state or local law enforcement
5 agency, the department, or the board on aging and long term care if the elder adult-at-risk has
6 requested the person to make the report, or if the person has reasonable cause to believe that
7 any of the following situations exist:

8 1. The elder adult-at-risk is at imminent risk of serious bodily harm, death, or
9 significant property loss, and is unable to make an informed judgment about whether to report
10 the risk.

11 2. Other adults-at-risk, including elder adults-at-risk other than the subject of the
12 report are at risk of serious bodily harm, death, sexual assault, or significant property loss
13 inflicted by the suspected perpetrator.

14 **SECTION 29.** 46.90 (4) (ae) of the statutes is created to read:

15 46.90 (4) (ae) A person specified in par. (a) is not required to file a report as provided
16 in par. (ad) if the person believes that filing a report would not be in the best interest of the elder
17 adult-at-risk. If the person so believes, the person shall document the reasons for this belief
18 in the case file of the elder adult-at-risk.

19 **SECTION 30.** 46.90 (4) (ag) of the statutes is created to read:

20 46.90 (4) (ag) Whoever intentionally violates sub. (4) (ad) by failure to report as
21 required may be fined not more than \$500 or imprisoned not more than 6 months or both.

COMMENT: This provision is patterned after the penalty in s. 48.981 (6),
 stats., relating to failure to report suspected child abuse.

22 **SECTION 31.** 46.90 (4) (ar) 1. of the statutes is amended to read:

1 46.90 (4) (ar) 1. Any person, including an attorney or a person working under an
2 attorney's supervision, may report to the county agency ~~or to any state official, including any~~
3 ~~representative of the office of the long-term care ombudsman under s. 16.009 (4), department,~~
4 the elder adult-at-risk agency, a state or local law enforcement agency, the department, or the
5 board on aging and long term care that he or she believes that abuse, ~~material abuse or~~ financial
6 exploitation, neglect, or self-neglect of an elder adult-at-risk has occurred if the person is
7 aware of facts or circumstances that would lead a reasonable person to believe or suspect that
8 abuse, ~~material abuse~~ financial exploitation, or neglect, or self-neglect of an elder
9 adult-at-risk has occurred. The person shall indicate the facts and circumstances of the
10 situation as part of the report.

11 **SECTION 32.** 46.90 (4) (b) 1. c. of the statutes is amended to read:

12 46.90 (4) (b) 1. c. Any person who violates this subdivision may be fined not more than
13 ~~\$1,000~~ \$10,000 or imprisoned for not more than 6 months or both.

14 **SECTION 33.** 46.90 (4) (b) 1. d. of the statutes is created to read:

15 46.90 (4) (b) 1. d. Any discharge of a person, or act of retaliation or discrimination that
16 is taken against a person, who makes a report under this subsection within 120 days after the
17 report is made establishes a rebuttable presumption that the discharge or act is made in
18 response to the report. This presumption may be rebutted by a preponderance of evidence that
19 the discharge or act was not made in response to the report.

20 **SECTION 34.** 46.90 (4) (c) of the statutes is amended to read:

21 46.90 (4) (c) No person may be held civilly or criminally liable or be found guilty of
22 unprofessional conduct for reporting in good faith under this subsection or for filing a report
23 with an agency not listed in par. (ad) (intro) or (ar) 1. if the person had a good faith belief that
24 the report was filed correctly with one of the listed agencies.

1 **SECTION 35.** 46.90 (4) (d) of the statutes is amended to read:

2 46.90 (4) (d) If a report under par. (a) (ad) or (ar) is made to a state official, the state
3 official shall refer the report to the appropriate county agency.

4 **SECTION 36.** 46.90 (4) (e) of the statutes is created to read:

5 46.90 (4) (e) Any person making a report under this subsection is presumed to have
6 reported in good faith.

7 **SECTION 37.** 46.90 (5) (a) of the statutes is renumbered 46.90 (5) (a) 2. and amended
8 to read:

9 46.90 (5) (a) 2. Except as otherwise provided, upon receiving a report of abuse, ~~material~~
10 ~~abuse~~ financial exploitation, neglect or self-neglect of an elder adult-at-risk, the ~~county elder~~
11 ~~adult-at-risk~~ agency shall either ~~investigate~~ respond to the report or refer the report to another
12 agency for investigation. Upon receiving a report of abuse, ~~material-abuse~~ financial
13 exploitation, neglect or self-neglect ~~of an elder person who resides in a community-based~~
14 ~~residential facility or a nursing home licensed under s. 50.03 or of an elder person who receives~~
15 ~~services from a home health agency licensed under s. 50.49 and the person suspected of~~
16 ~~abusing or neglecting the person is an employee of the home health agency~~ a client of an entity,
17 as described in s. 50.065, where the person suspected of abuse or neglect is a caregiver or a
18 nonclient resident of the entity, the county elder adult-at-risk agency may not investigate the
19 ~~report but it shall refer the report within 24 hours after the report is received, excluding~~
20 ~~Saturdays, Sundays and legal holidays, to the department for investigation. The department~~
21 shall coordinate its investigatory efforts with other investigatory authorities or agencies as
22 appropriate. An investigation A county department's response to or an agency's investigation
23 of a report of abuse, financial exploitation, neglect or self-neglect shall be commenced within
24 24 hours after a report is received, excluding Saturdays, Sundays and legal holidays. An

1 investigation of a report of material abuse shall be commenced within 5 days after a report is
2 received, ~~excluding Saturdays, Sundays and legal holidays.~~ If a report is referred to the
3 department, pars. (b) to ~~(g)~~ (f) and sub. (6) do not apply to the department.

4 **SECTION 38.** 46.90 (5) (a) 1. of the statutes is created to read:

5 46.90 (5) (a) 1. If an agent or employee of a county department required to respond
6 under this subsection is the subject of a report, or if the county department or an agency under
7 contract with the county department determines that the relationship between the county
8 department and the agency under contract with the county department would not allow for an
9 unbiased response, the county department shall, after taking any action necessary to protect
10 the elder person, notify the department. Upon receipt of the notice, the department or a county
11 department designated by the department shall conduct an independent investigation. If the
12 department designates a county department under s. 46.215, 46.22, 51.42, or 51.437, that
13 county department shall conduct the independent investigation. The powers and duties of the
14 county department making an independent investigation are those given to county
15 departments under pars. (b) to (g) and sub. (6).

16 **SECTION 39.** 46.90 (5) (b) of the statutes is amended to read:

17 46.90 (5) (b) ~~The scope of the county department's response or an agency's~~
18 ~~investigation is at the discretion of the investigating agency and may include one or more of~~
19 the following:

- 20 1. A visit to the ~~elder person's~~ residence of the elder adult-at-risk.
- 21 2. Observation of the elder ~~person~~ adult-at-risk, with or without consent of his or her
22 guardian or agent under an activated power of attorney for health care, if any.

1 3. An interview with the elder ~~person~~ adult-at-risk, with or without the consent of his
2 or her guardian or agent under an activated power of attorney for health care, if any. To the
3 extent practicable, this interview shall be private.

4 4. An interview with the guardian or agent under an activated power of attorney for
5 health care, if any, and any person who takes care of the elder ~~person~~ adult-at-risk.

6 5. A review of treatment and patient health care records of the elder adult-at-risk.

7 **SECTION 40.** 46.90 (5) (b) 6. of the statutes is created to read:

8 46.90 (5) (b) 6. A review of those financial records, if any, of the elder adult-at-risk
9 that are maintained by a financial institution, entity, as defined in s. 50.065, or caregiver of the
10 elder adult-at-risk or by a member of the elder adult-at-risk or caregiver's family. Such
11 records shall be released without informed consent in either of the following circumstances:

12 a. To an elder adult-at-risk agency designated under s. 46.90 (2) or other investigating
13 agency under s. 46.90. The financial record holder may release financial record information
14 by initiating contact with the elder adult-at-risk agency or other investigating agency without
15 first receiving a request for release of the information from the elder adult-at-risk agency or
16 other investigating agency.

17 b. Under a lawful order of a court of record.

18 **SECTION 41.** 46.90 (5) (br) of the statutes is created to read:

19 46.90 (5) (br) The elder adult-at-risk agency or other investigating agency may
20 transport the elder adult-at-risk for performance of a medical examination by a physician if
21 any of the following applies:

22 1. The elder adult-at-risk or his or her guardian or agent under an activated power of
23 attorney for health care, if any, consents to the examination.

1 2. The elder adult-at-risk is incapable of consenting to the examination and one of the
2 following applies:

3 a. The elder adult-at-risk has no guardian or agent under an activated power of attorney
4 for health care.

5 b. The elder adult-at-risk has a guardian or agent under an activated power of attorney
6 for health care, but that guardian or agent is the person suspected of abusing, neglecting, or
7 financially exploiting the elder adult-at-risk.

8 c. The examination is authorized by order of a court.

9 **SECTION 42.** 46.90 (5) (c), (d), and (f) of the statutes are amended to read:

10 46.90 (5) (c) If ~~an investigator so requests~~ requested, a sheriff or police officer shall
11 accompany the elder adult-at-risk worker or agency investigator during visits to the elder
12 person's adult-at-risk's residence and shall provide other assistance as needed.

13 (d) 1. If any person ~~except the elder person in question~~ interferes with the ~~investigation~~
14 response or investigation or delivery of protective services to the elder adult-at-risk, the elder
15 adult-at-risk worker or agency investigator may apply for an order under ch. 813 prohibiting
16 the interference.

17 2. The court shall grant the order upon a showing that there is reasonable cause to
18 believe that abuse, ~~material abuse~~ financial exploitation, neglect or self-neglect of an elder
19 adult-at-risk has occurred and that the interference complained of, if continued, would make
20 it difficult to determine whether the abuse, ~~material abuse~~ financial exploitation, neglect or
21 self-neglect has occurred, is occurring or may recur.

22 (f) If the ~~investigator~~ elder adult-at-risk worker or agency investigator has reason to
23 believe that substantial physical harm, irreparable injury or death may occur to an elder ~~person~~
24 adult-at-risk, the ~~investigator~~ worker shall ~~immediately notify the protective services agency~~

1 ~~designated under s. 55.02 request immediate assistance in either initiating a protective~~
2 ~~services action or contacting law enforcement or another public agency as appropriate.~~

3 **SECTION 43.** 46.90 (5) (g) of the statutes is repealed.

4 **SECTION 44.** 46.90 (5) (h) of the statutes is created to read:

5 46.90 (5) (h) No person may be held civilly or criminally liable or be found guilty of
6 unprofessional conduct for responding to a report or participating in or conducting an
7 investigation under this subsection, including the taking of photographs or the conducting of
8 a medical examination, if the response, investigation, taking of photographs, or conducting
9 of a medical examination was performed in good faith and under lawful authority.

10 **SECTION 45.** 46.90 (5m) (title) and (a) of the statutes are amended to read:

11 46.90 (5m) (title) ~~PROVISION~~ OFFER OF SERVICES AND REFERRAL OF CASES. (a) ~~After the~~
12 ~~investigation is completed~~ Upon responding to a report, the county elder adult-at-risk agency
13 or the investigating agency shall determine if whether the elder person adult-at-risk or any
14 other individual involved in the alleged abuse, ~~material abuse~~ financial exploitation, neglect
15 or self-neglect is in need of services under this chapter or ch. 47, 49, 51 or 55. From the
16 appropriation under s. 20.435 (7) (dh), the department shall allocate to selected counties not
17 less than \$25,000 in each fiscal year, and within the limits of these funds and of available state
18 and federal funds and of county funds appropriated to match the state and federal funds, the
19 county elder adult-at-risk agency shall provide the necessary direct services to the elder
20 person adult-at-risk, or other individual or arrange for the provision of the direct services with
21 other agencies or individuals. Those direct services provided shall be rendered under the least
22 restrictive conditions necessary to achieve their objective.

23 **SECTION 46.** 46.90 (5m) (br) of the statutes is created to read:

1 46.90 (5m) (br) If after responding to a report the elder adult-at-risk agency has reason
2 to believe that the elder adult-at-risk has been the subject of abuse, financial exploitation,
3 neglect or self-neglect, the elder adult-at-risk agency may do one or more of the following:

4 1. Request immediate assistance in either initiating a protective services action or
5 contacting law enforcement or another public agency as appropriate.

6 2. Take appropriate emergency action, including emergency protective placement
7 under s. 55.06, if the elder adult-at-risk agency determines that the emergency action is in the
8 elder adult-at-risk's best interests and the emergency action is the least restrictive appropriate
9 intervention.

10 3. Refer the case to local law enforcement officials under sub. (3) (a) for further
11 investigation or to the district attorney, if the elder adult-at-risk agency has reason to believe
12 that a crime has been committed.

13 4. Refer the case to the licensing or certification authorities of the department or to other
14 regulatory bodies if the residence, facility, or program for the elder adult-at-risk is or should
15 be licensed or certified or is otherwise regulated.

16 5. Refer the case to the department of regulation and licensing if the abuse, financial
17 exploitation, neglect or self-neglect involves an individual who is required to hold a
18 credential, as defined in s. 440.01 (2) (a), under chs. 440 to 460.

19 6. Bring or refer for a petition for a guardianship and protective services or placement
20 if necessary to prevent abuse, financial exploitation, neglect or self-neglect and if the elder
21 adult-at-risk would otherwise be at risk of serious harm because of an inability to arrange for
22 necessary food, clothing, shelter, or services, or a review of an existing guardianship.

23 **SECTION 47.** 46.90 (5m) (c) of the statutes is amended to read:

1 46.90 (5m) (c) An elder ~~person~~ adult-at-risk may refuse to accept services unless a
2 guardian authorizes the services. The ~~county~~ elder adult-at-risk agency or other provider
3 agency shall notify the elder ~~person~~ adult-at-risk of this right to refuse before providing
4 services.

5 **SECTION 48.** 46.90 (6) (a) of the statutes is renumbered 46.90 (6) (am) and amended to
6 read:

7 46.90 (6) (am) The ~~county~~ elder adult-at-risk agency ~~or other investigating agency~~
8 shall prepare a report ~~on each investigation it conducts unless the agency finds, at the~~
9 ~~conclusion of the investigation, that the report of alleged abuse, material abuse, neglect or~~
10 ~~self-neglect is without foundation of its response.~~ If an agency the elder adult-at-risk agency
11 ~~other than the county agency conducts the investigation, it refers the report to an investigating~~
12 agency, the investigating agency shall submit a copy of the investigation report to the county
13 agency advise the elder adult-at-risk agency in writing of its response to the report. The elder
14 adult-at-risk agency shall maintain reports of suspected abuse, financial exploitation, neglect,
15 or self-neglect.

16 **SECTION 49.** 46.90 (6) (a) of the statutes is created to read:

17 46.90 (6) RECORDS; CONFIDENTIALITY. (a) *Definitions.* In this section:

18 1. "Record" includes any document relating to the response, investigation, assessment,
19 and disposition of a report under this section.

20 2. "Report" includes documentation of an agency's response to a report and the
21 investigation of reported suspected abuse, financial exploitation, neglect, or self-neglect that
22 provides a summary of the case, including the report form submitted to the state with all client
23 identifying information removed.

24 **SECTION 50.** 46.90 (6) (b) (intro.) 1., 6. and 7. of the statutes are amended to read:

1 46.90 (6) (b) (intro.) Reports of suspected abuse, ~~material abuse neglect or self-neglect~~
2 and investigation reports under this section are confidential and may not be released by the
3 county elder adult-at-risk agency or other investigating agency, except under the following
4 circumstances they may be released:

5 1. To the elder ~~person and~~ adult-at-risk, any person named in a report who is suspected
6 of abusing or neglecting or financially exploiting an elder ~~person~~ adult-at-risk, and the
7 suspect's attorney. These persons may inspect the report on the investigation, except that
8 information identifying the person who initially reported the suspected abuse, ~~material abuse~~
9 financial exploitation, neglect or self-neglect, or any other person whose safety might be
10 endangered through disclosure, may not be released.

11 6. To any agency or individual that provides direct services under sub. (5m), including
12 an attending physician for purposes of diagnosis and treatment, and within the department to
13 coordinate treatment for mental illness, developmental disabilities, alcoholism, or drug abuse
14 of individuals committed to or under the supervision of the department. Information obtained
15 under this subdivision shall remain confidential.

16 7. To the guardian of the elder ~~person~~ adult-at-risk or the guardian of any person named
17 in a report who is suspected of abusing or neglecting or financially exploiting an elder ~~person~~
18 adult-at-risk. These persons may inspect the report on the investigation, except that
19 information identifying the person who initially reported the suspected abuse, ~~material abuse~~
20 financial exploitation, neglect or self-neglect, or any other person whose safety might be
21 endangered through disclosure, may not be released.

22 **SECTION 51.** 46.90 (6) (b) 9. and 10. of the statutes are created to read:

23 46.90 (6) (b) 9. To a federal agency, agency of this state or any other state, or local
24 governmental unit in this state or any other state that has a need for a report or record in order

1 to carry out its responsibility to protect elder adults-at-risk from abuse, neglect, self-neglect,
2 or financial exploitation.

3 10. To a reporter who made the report in his or her professional capacity, regarding
4 action to be taken to protect or provide services to the alleged victim of abuse, neglect,
5 financial exploitation, or self-neglect.

6 **SECTION 52.** 46.90 (6) (bd) of the statutes is created to read:

7 46.90 (6) (bd) If a person requesting a report is not one of the persons or entities in par.
8 (b), the elder adult-at-risk agency may release information indicating only whether or not a
9 report was received and whether or not statutory responsibility was fulfilled.

10 **SECTION 53.** 46.90 (6) (br) of the statutes is created to read:

11 46.90 (6) (br) Notwithstanding par. (b) 1. to 10., an elder adult-at-risk agency or an
12 investigative agency may not release reports of suspected abuse, financial exploitation,
13 neglect, or self-neglect, and investigation reports under this section, if any of the following
14 apply:

15 1. The agency determines that the release would be contrary to the best interest of the
16 elder adult-at-risk who is the subject of the report, or a minor residing with the subject of the
17 report, or the release is likely to cause mental, emotional, or physical harm to the subject of
18 the report, or to any other individual, including an adult-at-risk.

19 2. The district attorney determines that disclosure of the information would jeopardize
20 any ongoing or future criminal investigation or prosecution or would jeopardize a defendant's
21 right to a fair trial.

22 3. The agency determines that disclosure would jeopardize ongoing or future civil
23 investigations or proceedings or would jeopardize the fairness of such a legal proceeding.

24 **SECTION 54.** 46.90 (6) (bt) of the statutes is created to read: